

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEPHEN MCCOLLUM, *et al.*,
Plaintiffs,

v.

BRAD LIVINGSTON, *et al.*,
Defendants.

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CIVIL NO. 4:14-CV-3253

Exhibit 1

Brad Livingston - 10/1/2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM and SANDRA)
McCOLLUM, individually, and)
STEPHANIE KINGREY,)
individually and independent)
administrator of the Estate)
of LARRY GENE McCOLLUM)
PLAINTIFFS)

VS.)

CIVIL ACTION NO.
4:14-cv-3253
JURY DEMAND

BRAD LIVINGSTON, JEFF)
PRINGLE, RICHARD CLARK,)
KAREN TATE, SANDREA SANDERS,)
ROBERT FASON, the UNIVERSITY)
OF TEXAS MEDICAL BRANCH and)
the TEXAS DEPARTMENT OF)
CRIMINAL JUSTICE)
DEFENDANTS)

ORAL AND VIDEOTAPED DEPOSITION OF

BRAD LIVINGSTON

October 1, 2015

Volume 1

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1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363

APPENDIX 002

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1 A. Yes.

2 Q. It looks like the -- more than 80 percent of the
3 weather-related injuries occurred in those time period, right?

4 A. I trust your math. I haven't done the computation,
5 but that's certainly a large percentage.

6 Q. You're the finance director, so don't trust my math.
7 I am a lawyer. Don't -- don't trust my math, but the way I add
8 it up it looks like 85 out of 103 during those three months?

9 A. Correct.

10 Q. If we had we add September, it becomes 89 out of 103.
11 As a policy maker, does that tell you, look, we've got a
12 problem with weather-related injuries during these months, and
13 we have to take steps to deal with it, right?

14 A. I'm -- I'm not sure it does.

15 Q. Okay. Tell me another industry that you're familiar
16 with that has 85 weather-related injuries in the summer
17 indoors?

18 A. I'm not --

19 MS. BURTON: Objection. Incomplete
20 hypothetical.

21 A. I'm not in a position to know the answer to that.
22 I'm certainly not an expert on -- on injuries. I don't work in
23 the area of workers' comp. I certainly wouldn't know what
24 other injuries experience with respect to injuries in their --
25 in their industry.

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APPENDIX 003

Brad Livingston - 10/1/2015

1 THE COURT: I'm going to overrule the objection
2 and allow the question.

3 Q. (BY MR. EDWARDS) And I'll just ask -- I understand
4 that you're not an expert in workers' compensation and perhaps
5 not an expert in other industries, but shouldn't you be
6 inquiring about this as the head of the agency or making sure
7 your directors are?

8 A. This is a report that is utilized by our unit-based
9 staff, by our Correctional Institutions division staff and by
10 our Administrative Review and Risk Management staff, among
11 others. Those divisions review these numbers. They review the
12 documents that this agency produces. And as a follow up to a
13 point I made earlier, as the executive director, I officially
14 have access to what I personally utilize or review every one of
15 these reports.

16 My expectation is that the agency have at the
17 appropriate level of leadership and management staff who review
18 these numbers. And to the extent that that there was a trend
19 that was problematic and outside of the norm that they would
20 call it to my attention. No one has called this to my
21 attention.

22 Q. Okay.

23 A. I think another relevant, although you didn't think
24 so, was the number of injuries in total. I think another
25 factor that's relevant is the fact that we have 38,000

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1 employees in this agency. In 2011, the number was closer to
2 40,000 employees.

3 So I think the -- the -- in a vacuum, the number
4 of any type of injuries by itself doesn't tell the whole story.
5 I think it's important to know the context and the size of the
6 universe that you're dealing with there. So it's the -- if,
7 for example, this was an agency of 400 employees and 103 were
8 injured during fiscal year 2011 due to weather, that would be a
9 significantly different issue than an agency with 38,000
10 employees.

11 So it -- it simply depends. There are a lot of
12 complexities involved here, and I trust the staff that I have
13 in place whose jobs it is to monitor these things and to manage
14 our agency's risk and to review these documents and review
15 these trends. I trust their judgment and expect them to do
16 their jobs, and that would be to engage in this kind of
17 analysis and dialogue with each other and make sure that we
18 have a safe -- as safe as an organization and workplace as we
19 possibly can.

20 Q. Do you think you should have safe workplace as you
21 possibly can?

22 A. I think every organization has -- has an obligation
23 to have safe as a workplace environment as they can put in
24 place operationally.

25 Q. If you had air-conditioning or some sort of climate

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1 A. I think it would be roughly the same. I don't think
2 there's a statistically significant difference between the two.

3 Q. Okay. Maybe you're right. It's about the same. So
4 despite the record-setting temperatures in 2011, the same
5 number of injuries happened, at least weather-related injuries,
6 in fiscal year 2012?

7 A. With respect to employee injuries.

8 Q. Okay. It looks like you guys got better at the
9 February injuries, too.

10 All right. Let's go to 2013.

11 A. I think to your point there that emphasizes that
12 there are variety of things that might factor into injury --
13 weather-related injuries that may be separate and apart from
14 the heat and specific conditions.

15 Q. Sure. Sure.

16 Now, the best way to find that out, though, is
17 to --

18 A. -- look at each individual case.

19 Q. And ask questions, right?

20 A. As an organization, yes.

21 Q. Now, let's look at 2013. The numbers appear to go
22 down, but it looks like during June, July, and August, there's
23 still 58 weather-related injuries. That was one of those mild
24 summers, right?

25 A. I -- I never characterized 2013 as a mild summer. I

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APPENDIX 006

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1 who would work in our system on those housing areas.

2 THE COURT: Okay. All right.

3 Q. (BY MR. EDWARDS) And that 20,000 number, sir --

4 A. And, again, that's a very rough estimate.

5 Q. I totally appreciate that. That's your best estimate
6 of the correctional officers excluding like the secretary for
7 the warden at those air-condition units, right, because those
8 administrative position are always air-conditioned?

9 A. That's my best estimate on the spot based upon my
10 years of experience.

11 Q. Sure.

12 A. Discounting the fact that we have some correctional
13 staff who worked in facilities that are air-conditioned housing
14 areas.

15 Q. Okay. Looks like even in 2013, there appear to be 81
16 weather-related injuries?

17 A. That's correct.

18 Q. The vast majority happened, again, June, July,
19 August?

20 A. I think you would probably find that trend if you
21 listed 30 years' of data.

22 Q. Do you think that trend would go down if there was
23 climate control in the housing area?

24 A. I don't know because what I don't know is the
25 percentage of these, without getting the case-by-case detail, I

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APPENDIX 007

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1 don't know the percentage of these occurred in the housing
2 areas as opposed to out in the field working on job
3 assignments. So I would really hate to guess.

4 Q. Fair enough.

5 For those, and we don't know because we don't
6 have information about that, but for the ones that happened
7 inside, do you think providing air-conditioning or some sort of
8 climate control would -- would cause that trend to go down? I
9 mean, how could it not, right?

10 A. I don't know for sure, but it -- that might very well
11 be the case.

12 Q. Jury briefly, I believe you testified that the
13 facilities designed in the 80s and 90 were consistent with the
14 prison standards at the time. How do you know that?

15 A. That would be my expectation.

16 Q. Just your expectation. Fair enough.

17 Just briefly, I know we talk a lot about
18 air-conditioning, and is this a true statement: Absent a court
19 order, you're not going to put an air-conditioning housing
20 areas that don't have it currently?

21 A. Could you restate the question or repeat the
22 question, please?

23 Q. Sure.

24 Absent a court order, are you, the agency, are
25 not going to try to get air-conditioning or climate control

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